

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed November 2, 2009. At the time of the Office Action, Claims 1-122 were pending in the Application. Claims 1-13 stand rejected. Claims 14-122 are withdrawn from consideration. Applicant amends several Independent Claims without prejudice or disclaimer. The amendments to these claims are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 1-13 under 35 U.S.C. §101 and stated that the claimed invention is directed to non-statutory subject matter. Applicant has made a modest amendment to the identified Independent Claim in an effort to address the Examiner's concern and to comply with the ever-changing §101 guidelines at the USPTO.

Any amendment in this regard should not be construed as an agreement with, or acquiescence to, the propriety of the Examiner's contention. Applicant reserves the right to comment on the appropriateness of the §101-based amendment at a future time, should Applicant deem it appropriate to do so.

35 U.S.C. §102 Rejections

The Examiner rejects Claims 1-5 and 7 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,665,295 issued to Burns et al. (hereinafter "*Burns*"). This rejection is respectfully traversed for the following reasons.

Independent Claim 1 is Patentable over Burns

Applicant respectfully reminds the Examiner that a claim is anticipated only if each element as set forth in the claim is either found, expressly or inherently described, in a single prior art reference.¹ In addition, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claims” and “[t]he elements must be arranged as required by the claim.”² In regard to inherency of a reference, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Independent Claim 1, as amended, recites (*inter alia*) “...the SPVC connection message further comprises a service category parameter, a virtual path identifier (VPI) parameter, and a peak cell rate (PCR)/sustained cell rate (SCR) parameter, and wherein the access identifier comprises an alias for a closed user group (CUG).”

No reference of record, including *Burns*, offers an architecture in which these activities occur. First, there is nothing in the cited references for the service category parameter, the VPI parameter, and the PCR/SCR parameter ***being included in the connection message***. Note that all of these parameters are recited as being provided in the connection message: something that is not accounted for in the *Burns* reference. Secondly, no reference includes a discussion

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

for the access identifier comprising an alias for a closed user group in the context recited by Independent Claim 1.

At the passages cited by the Examiner (of *Burns*) for potentially relevant discussions related to these limitations, there is simply nothing that discloses such capabilities. Again, these important limitations are provided for in Independent Claim 1, but no reference of record includes such elements. Applicant has reviewed *Burns* and finds nothing that would be relevant to such operations. For at least these reasons, each of the Independent Claims is allowable over the cited reference. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons. Notice to this effect is respectfully requested.

35 U.S.C. §103(a) Rejections

The Examiner rejects Claims 6, 8-9 and 11-12 under 35 U.S.C. §103(a) as being unpatentable over *Burns* and further in view of U.S. Publication No. 2009/0041022 issued to Chase et al. (hereinafter "*Chase*"). The Examiner further rejects Claims 10 and 13 under 35 U.S.C. §103(a) as being unpatentable over *Burns* and further in view of U.S. Patent No. 6,597,689 issued to Chiu et al. (hereinafter "*Chiu*").

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.⁵

⁵ See M.P.E.P. §2142-43.

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims. Specifically, nothing in *Burns* (or in any other reference) provides the features that were evaluated extensively above in the tendered §102 analysis.

For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

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37

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

No additional fees are believed due. However, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at (214) 823-1241.

Respectfully submitted,

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